APPENDIX B

INTERSTATE COMMERCE COMMISSION

Service Date
September 19, 1966

FINANCE DOCKET No. 21989[1]

PENNSYLVANIA RAILROAD COMPANY—MERGER—NEW YORK CENTRAL RAILROAD COMPANY

Decided September 16, 1966

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1. Norwich & Worcester Railroad Company permitted to intervene and become party to proceedings for limited purpose of seeking inclusion in accordance with petition for inclusion filed July 8, 1966.

2. Norfolk & Western Railway Company and Oscar Gruss & Sons permitted to intervene for limited purpose of participating in further proceedings herein.

3. On reconsideration, condition 9 of appendix A to prior report modified and provision made for hearing with respect to modifying appendix G and with respect to proposals for indemnification for capital losses in connection with the proposed merger.

Prior report 327 I.C.C. 475.

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[1]This report also embraces Finance Docket No. 21990, Pennsylvania Railroad Company Stock Issuance.

F. D. No. 21989

Appearances shown in prior report and *William R. Althans, James A. Belson, David Berman, Ray B. Bracy, Edward W. Brooke, J. Kenneth Campbell, George U. Carneal, Jr., Michael A. Close, Paul J. Coughlin, Jr., Kenneth H. Ekin, John C. Hill, Jr., Richard Jackson, Louis J. Lefkowitz, Gordon P. MacDougall, Patrick J. Melody, Richard J. Mulhern, H. Merle Mulloy, John T. Rafferty, Robert G. Seaks, Arthur J. Sills, James J. Walsh,* and *Edward K. Wheeler* for petitioners and repliants.

John H. Dougherty for the United States of America, Department of Justice.

REPORT OF THE COMMISSION ON RECONSIDERATION BY THE COMMISSION:

Our report and order of April 6, 1966, 327 I.C.C. 475, found in Finance Docket No. 21989 that subject to certain conditions the merger of The New York Central Railroad Company (NYC) into the Pennsylvania Railroad Company (PRR), which company would thereupon change its name to the Pennsylvania-New York Central Transportation Company (Transportation Company), and the resulting acquisition by PRR of sole or joint control of NYC's subsidiaries and of leases, contracts to operate properties of other carriers and trackage rights and terminals incidental thereto held jointly or otherwise by NYC, would be consistent with the public interest and approved and authorized the transactions. Our report and order also approved and

authorized, in Finance Docket No. 21990, the incidental stock and security issues and assumptions of obligations necessary to effectuate the merger.

Petitions for reconsideration, rehearing, further hearing, reargument, or postponement, modification, or stay of effective date, with respect to our report and order have been filed by The Chesapeake and Ohio Railway Company (C&O) jointly with The Baltimore and Ohio Railroad Company (B&O); the Reading Company (Reading); the Chicago & Eastern Illinois Railroad Company (C&EI); The Delaware and Hudson Railroad Corporation (D&H); the Erie-Lackawanna Railroad Company (E-L); The Central Railroad Company of New Jersey (CNJ); Milton J. Shapp (Shapp); the State of New Jersey and its Board of Public Utility Commissioners (N. J. PUC); Beaver County, Pa.; Lehigh County, Pa.; Pottsville, Pa.; Scranton, Pa.; Lackawanna County, Pa.; Allentown, Pa.; the Boston and Maine Corporation (B&M); and the Peoria and Eastern Railway Company Stockholders' Protective Committee (Levine Group).[2]

Replies to the petitions generally have been filed by the applicants (PRR and NYC); the State of New York (New York); Richard Joyce Smith and William J. Kirk, Trustees of the property of The New York, New Haven and Hartford Railroad Company, Debtor (NH);

[2]Where possible, the abbreviated titles of parties referred to in this report follow those used in our prior report or in the hearing examiners' report served March 29, 1965.

and the Boston & Providence Railroad Stockholders Development Group (B&P Minority Interest); the Department of Justice (Department); and the Manufacturers Association of Connecticut.

Replies to the various petitions for stay, delay, or postponement of the effective date of our order have been filed by the State of Connecticut Public Utilities Commission (Conn. PUC); the Commonwealth of Massachusetts Department of Public Utilities (Mass. DPU) and Governor John H. Chaffee and the Division of Public Utilities of the State of Rhode Island (R. I. DPU). D&H has replied to the joint petition of C&O-B&O and to the petitions of Reading, CNJ, C&EI, and Shapp. The Western Maryland Railroad Company (WM) has replied to D&H; B&M to C&O-B&O, E-L to C&O-B&O, Reading, CNJ, and C&EI; and Reading to E-L, D&H, and B&M.

PRELIMINARY MATTERS

The Norfolk and Western Railway Company (N&W) and Oscar Gruss & Son (Gruss), neither of whom have heretofore participated in the proceedings, have petitioned for leave to intervene in order that they might seek reconsideration and other relief. To these petitions, the applicants, D&H, B&M, E-L and New York have replied.

For the stated purpose of avoiding control by the Transportation Company, N&W seeks further hearing to consider modifying condition 10 in appendix A of

our prior report (327 I.C.C. 553-4) which requires the divestiture by the Transportation Company of PRR and NYC interests in N&W and C&O (and present or prospective affiliates and subsidiaries). It also urges reconsideration of the provisions imposed for the protection of D&H, B&M and E-L and for their inclusion in the Transportation Company.

But for the limited area of interest noted later herein, N&W puts forth no grounds for reconsideration that are not advanced by the parties already before us. Its intervention at this time, more than four years after the applications were filed and two years after the close of the hearings, for the most part is unwarranted. As later described, we are allowing N&W to intervene for a limited purpose, and except to that extent, its petition is denied.

Gruss seeks intervention to press for the immediate inclusion of NH in the merged system. In the prior report, we acknowledged that inclusion of NH operations raises many problems, including those related to section 77 of the Bankruptcy Act, and that their resolution would require time and much personal endeavor on the part of all those interested, thus precluding immediate inclusion. By October 27, 1966, however, the parties concerned are to file for our approval, an inclusion plan covering the terms and conditions agreed upon, and in the absence of such a filing, we have the jurisdiction reserved to set the terms and conditions ourselves. It is

therefore not possible to grant the immediate relief which Gruss seeks. But, as concluded in the prior report, withholding the public benefits otherwise obtainable through the merger is not warranted.

Although the relief now requested is not justified, Gruss, as a substantial investor in NH securities, undoubtedly has an interest in the ultimate disposition of the bankrupt carrier's operations. Therefore, to obviate the need for another petition in order to participate in the inclusion proceeding, we will permit Gruss to intervene now and become a party herein, but deny the specific relief sought in its petition, without prejudice to its seeking such relief as it deems warranted in any proceeding involving the inclusion of NH's operations.

The Norwich and Worcester Railroad Company (Norwich & Worcester), is party to a lease under which its properties are to be operated by NH until 1969. It seeks inclusion in the transaction in its own right rather than as part of NH's operations. This petition is pursuant to our order of July 12, 1965, by which a previous attempt at intervention was denied without prejudice to renewal upon our grant of the instant merger applications and the inclusion of NH or any portion thereof in the merger transaction. The conditions having been met, Norwich & Worcester is permitted to intervene for the purpose of seeking inclusion, in accordance with its petition therefor, in any subsequent proceeding held regarding the inclusion of NH's operations in the instant transaction.

MERITS OF THE MERGER

We have given careful consideration to the arguments advanced by the B&P Minority Interests, Shapp, and the Pennsylvania Counties of Lehigh and Beaver and to the various grounds they urge in support thereof, to the effect that we erred in approving the merger. We have similarly considered Shapp's request for reconsideration of our denial of his petition for reopening the record and for an opportunity under section 7(d) of the Administrative Procedure Act, to show that we should take official notice of certain extraneous and extra-record matter he advances for further hearing. Our judgment of the law and the facts, as they have been exhaustively analyzed by us and by the parties to these proceedings, continues to be that the merger is fully warranted by pertinent public considerations, and that a reopening on the grounds urged by these petitioners is not justified. We reaffirm our conclusions approving this merger in the light of the controlling statutory standards.

As was made clear in our prior report, of primary importance to the public is the fact that the PRR-NYC merger will make available in the Eastern District an up-to-date transportation agency geared to provide the kind of service our burgeoning economy must have. Realization of the effects of this merger at this time will create a reasonably well balanced competitive climate within the Eastern District, with three strong rail systems possessing the capacity to meet the increasing, and increasingly sophisticated, requirements of the shipping

public for reliable service. Rejection of the merger proposal, on the other hand, would prevent achievement by applicants of a number of major, publicly desirable operating improvements in their service, and the resolution of a number of their persistent financial problems. As we stated in the prior report:

> We believe that with approval of this merger many problems facing the applicants will be resolved to a considerable degree. Applicants have shown that their annual savings from the merger will exceed $80 million after about 8 years . . . These large operating savings will go far toward compensating for the persistently low rates of return, and the increased earnings flowing from the merger should motivate the unified company to accelerate investments in transportation property and continually modernize plant and equipment. This in turn should enable the unified company to more fully develop and utilize the inherent advantages of railroad transportation in the territory served, and provide more and better service, all to the ultimate benefit of the public. [327 I.C.C. at 501-2]

Our decision to approve the merger was made with a full awareness of its competitive consequences within the transportation industry itself and upon the public, in light of the policies of the Interstate Commerce Act and the antitrust laws of the nation. We see no justification for a departure from the conclusion stated in our prior report that the proposed PRR-NYC merger, as conditioned therein (and as those conditions may be modified herein), satisfies the requirements of the law.

The following summary from the prior report bears repeating at this point:

> . . . In view of their vulnerable and highly sensitive financial situation and their persistent incapacity to produce profits from rail operations—as we have found elsewhere in this report—we are convinced that applicants, if required to continue as independent lines, could not keep pace with their common carrier obligations, and neither they nor the public which depends upon them for service would benefit.
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> We do not mean to imply that merger is the magic touchstone of success—too many other elements are essential: research, progressive technology, salesmanship, alert management willing to face today's problems on a realistic basis, etc. But this merger will enable the applicants to more effectively handle the external pressures with which they must daily contend in fulfilling a large part of the requirements of the public convenience and necessity in transportation. The economies it makes possible can be converted into the greater return needed by the applicants to attract investment capital, to maintain and improve service essential in commerce and industry, to recapture diverted traffic and to avoid further loss of traffic to other carriers.
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> In our opinion the expectations of the supporting shippers will be met, for applicants are fully cognizant, as is the railroad industry in general, of the formidable intermodal competition actively engaged in seeking to divert their business. This is so as to practically all commodities, and particularly as to

commodities which bear the higher, more compensatory rates. In union, PRR and NYC will also be able to offer more vigorous competition to the enlarged N&W and C&O systems as well as to truck and barge lines; and this, in turn, should stimulate carriers of the several modes into improving service. [327 I.C.C. at p. 519-20]

Shapp contends that our analysis of competition is inadequate with respect to market competition between the applicants and to the interlocking directorates he alleges will occur among the applicants, insurance companies, financial institutions and leading industrial corporations. In our comprehensive discussion of competition and the antitrust laws we pointed to the participation of the applicants in the transportation of practically the entire gamut of commercial commodities originating and terminating in virtually all sections of the country, and at overseas points as well, and referred to the difficulty of applying the pattern of analysis used in antitrust cases because of the essential difference between transportation and other industries as discussed by the hearing examiners in their report. Obviously, with carrier systems the size of those involved here, it would be virtually impossible to discuss competition from the viewpoint of each individual shipper, commodity, station and routing involved. The three decisions cited by the petitioner in support of his contentions (*Directors of Wheeling & Lake Erie*, 138 I.C.C. 643, *Interstate Commerce Commission* v. *Baltimore & O. R. Co.*, 152 I.C.C. 721, and *Interstate Commerce Commission* v. *Baltimore & O. R. Co.*, 160 I.C.C. 785), were, in the first instance, decided under the public interest

criteria of section 20a, and in the other two instances, under section 7 of the Clayton Act. None involved a consolidation or any other proceeding under section 5(2), with the consequent statutory relief from the antitrust and other laws provided by section 5(11) or its legislative predecessor, former section 5(15).

Moreover, the criterion in point here is not primarily whether there will be a diminution in competition (market or otherwise), but rather, what will be the effect upon the public interest relative to transportation. We recognized that, to some extent, competition will be reduced, and, in some instances, eliminated. On the other hand, we found countervailing benefits to the public in improved transportation, and, in fact, we foresaw distinct possibilities for increased or enhanced competition. Finally, it must be kept in mind that transportation is a regulated industry subject in its day-to-day activities to the constant scrutiny of this Commission and State regulatory bodies. Section 5(2) applicants, having once received Commission approval of their transaction, and having thus been freed of certain legal restraints (including antitrust laws) insofar as necessary to put the transaction into effect, must nevertheless comply in detail with all laws and regulations, both federal and state, governing rates, charges, routes, practices and numerous relations with shippers and the public, as well as financial and managerial activities and intercarrier relations. The law and this Commission stand as a continuous bar to any perversion of the economic power gained by applicants through approval

of their section 5(2) transaction. Both shipper and the public in general have recourse to the law in many ways for protection against undue prejudice or discrimination in transportation, or unreasonable treatment by carriers. This Commission has a statutory duty to enforce the Interstate Commerce Act insofar as it pertains to railroads, and other legislation relating to rail transport, and in connection therewith has the authority, among other things, to inquire into the management of the business of railroads, to inspect the books, records and accounts and the physical properties of the railroads, and to require annual, periodical, or special reports from carriers, all to the ends of promoting improvement in transportation as comprehended by the national transportation policy, and of safeguarding the public interest. In this context and in view of the substantial evidentiary support in the record, we are not convinced of inadequacy or error in our competition and anti-trust findings.

While we do not condone any unauthorized interlocking directorates, the mere possibility of a violation of the Clayton Act on that score does not warrant denial of the merger application in view of the remedies available under the law. See *Minneapolis & St. Louis R. Co. v. U.S.*, 361 U.S. 173, 190-1 (1959). Nor does the strengthening of the merged system in its bargaining for supplies.

TIME OF CONSUMMATION

We have considered carefully the contentions of various petitioners that in any event the consummation of a Penn-Central merger should be deferred indefinitely. We have particularly considered the contention of E-L and D&H that consummation should be deferred until their inclusion in a major rail system is accomplished or assured. For the reasons stated below, we believe that prompt consummation of the merger clearly would be in the public interest.

We have found that the merger will eventually produce annual savings of at least $80 million dollars for the applicants. This benefit alone is no small factor of public interest when we consider the applicants' financial situation during the past decade and the fact that they, like the rest of American industry, are not assured of continuous operations at the 1966 level. To postpone consummation of the merger which we approved because there is at present a high level of economic activity gambles unnecessarily and unjustifiably with the future of these lines and their ability to render essential services. More important, we found that the merger would result in substantially improved service for the large shipping public served by these applicants. As stated by C&O and B&O in their petition,

> A merged Penn-Central will generate large savings and touch off a significant drive for the type of broad-gauge service improvements which is the very purpose of the merger. There will be funds

> available for the acquisition of additional equipment including special equipment, for the improvement of track facilities, for the speeding of service, * * *

It is these service benefits to the public which will provide the heightened competition with other carriers and which led us to conclude (327 I.C.C. at 531) that "a substantial amount of traffic could be diverted from E-L, D&H, and B&M."

Recognizing this competitive impact, we have taken two major steps: (1) we have provided opportunities for inclusion of E-L, D&H, and B&M in either the N&W system or the applicants' merged system; (2) we have imposed in appendix G to the prior report (and applicants have accepted) unique conditions designed to maintain the traffic status quo for these three railroads pending final determination of their inclusion petitions; and (3) we have provided for hearing the question raised by these carriers and by N&W as to whether and to what extent the applicants should be indemnified for any permanent impairment of capital values caused by diversion of traffic to the merged company. In addition (even with the appendix G protective conditions), the task of implementing a merger of this size is so vast and complex that its competitive effects will occur only gradually. We see no basis for disagreeing with the testimony of the chairman of both E-L and D&H (a former president of New York Central) in F. D. No. 21510, that E-L would not "be substantially and adversely affected immediately upon comsummation of [the Penn-Central] merger", and

that "the effects would begin to be felt perhaps in the second year, and not in the first year."

We recognize that we cannot at this time guarantee absolutely that E-L, D&H and B&M will be included in in major rail system on terms which they find satisfactory. However, we do not believe that this uncertainty is one which justifies postponement, perhaps for several years, of large public benefits which will flow from applicants' merger. A day's delay at the outset of the undertaking can only mean a day's delay at its conclusion, and, thus, every day that consummation is postponed denies the shipping and consuming public, as well as the management and owners of these railroads, the many benefits which we found stem from the transaction we approved.

Inclusion of New Haven's vital passenger and freight operations in the merged company, as we have provided, is the only solution which has been proposed for continuance of that bankrupt carrier's operations. Although the applicants have agreed to such inclusion, we cannot predict the date upon which such actual inclusion will occur.

If consummation of the applicants' merger is deferred several years or indefinitely, we can have no assurance that it will ever occur. The factors that enter into an agreement to merge sooner or later can be affected by changing conditions. Absent the applicants' merger we see no solution to the New Haven problem. Certainly, neither of the applicants separately can be required to take over New Haven's deficit-ridden opera-

tions. We are not prepared to take this risk involved in a substantial postponement of consummation of the merger. Moreover, we are not prepared to take the risks which delay of consummation of even six or twelve months might entail in providing a solution of the New Haven problem other than liquidation.

For all the foregoing reasons, we believe that the public interest requires prompt consummation of the proposed merger.

OTHER MATTERS

Effect on Employees

Between the hearing examiners' report and our prior report, full consideration has been given to the effect of the merger upon the applicants' employees. It was pointed out how the vast majority of the affected work force, represented by 23 unions, proceeding under the last sentence of section 5(2)(f), have entered into an agreement with the applicants, providing for employee benefits far in excess of what had ever been required by this Commission and superior to benefits available in industry generally. And those same benefits and protective conditions were imposed by us for the affected employees not represented by the signatory unions. We also pointed out that appropriate provision will be made, in whatever future proceedings are held, for employees of ultimately included carriers who are adversely affected by the inclusion of their employing carrier. Only Shapp, but not railway labor itself, has petitioned for reconsideration on this score.

The standard gateway and routing conditions and, in certain instances, special conditions, were imposed in our prior report to insulate connecting carriers as far as possible from the erosion of traffic through diversion by the Transportation Company. No showing was made on the record that the employees of the connecting carriers so protected will be adversely affected by the merger. The petitioner claims these employees must be considered pursuant to *Railway Labor Executives' Association* v. *United States*, 216 F. Supp. 101. However, in that case, the employees whom the court found must be considered, were actually performing work for the applicant carrier even though they were technically on the payroll of another.

In the instant case, employees of other carriers are not shown to perform work for the account of either applicant. Their employers are carriers merely connecting with the applicants for interchange, and it is doubtful that they will realize an economic loss in the course of maintaining such connections. Any such loss by the carrier, (if, in fact, incurred) or ensuing adverse effect upon employees is not sufficiently related to the merger to warrant consideration of the merger's effect upon the employees of the connecting carriers or the imposition of protective conditions in their behalf. See *Railroad Labor Executives' Association* v. *United States*, 226 F. Supp. 521, 525 (1964), vacated and remanded in part for reasons not involved here by per curiam order in 379 U.S. 199 (1964).

Alleged Control of N&W by PRR. The position of C&O-B&O is that they do not oppose the instant merger because they recognize a great need for railroad consolidation in the East and consider that this one would substantially strengthen the applicants, generate large savings, and contribute to the adequacy of the national transportation system. However, they request that consummation be indefinitely postponed and the proceeding reopened for further hearing to receive further evidence on the power of the merged system to control N&W. They contend that PRR control or influence over N&W could be used to bar the N&W and C&O-B&O merger already approved by their respective stockholders. Their stated concern is that they not be left to compete against a merged PRR-NYC which could also control N&W.

C&O-B&O recite how, in the *N&W merger*[3] case, PRR was given 10 years to effectuate complete divestiture of its interests in N&W, and independent voting trusts were permitted as an interim measure for effecting separation. Speculating that the reason for that decision may have been that N&W rather than PRR was the direct beneficiary, it attempts to distinguish the situations by noting that in this case, PRR seeks approval of a consolidation which would confer benefits directly upon itself. Accordingly, they contend it is this proceeding which should be reopened to consider an effective divorcement of control; that the necessity

[3] *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger*, 324 I.C.C. 1.

therefor should be the subject of a hearing; and that if immediate and full divestiture is deemed infeasible or unnecessary, means should be considered for erecting an effective barrier between a merged PRR-NYC and N&W, and compelling respect for the separate corporate status of N&W by the merged carriers.

Reading, a family line of C&O-B&O, contends that any power in PRR to control N&W would be prejudicial to Reading and requests postponement of the merger for further hearing on this matter. Its basis is that it participates with N&W in important through routes, including the so-called Alphabet Route[4] in competition with present PRR and NYC routes and with the new single-line routes contemplated by the Transportation Company. In addition, it maintains that PRR attempted to persuade the trustees of its N&W stock to vote against the proposed N&W and C&O-B&O merger, and that this poses a threat not only to the effectiveness of the Reading-N&W traffic relationships but also to petitioner's very existence in that it is directed at the defeat of the only merger program—the N&W and C&O-B&O merger—which provides for the inclusion of Reading. Accordingly, Reading advocates an investigation of the matter and such action as is necessary to assure that PRR, and eventually the merged system, are in fact completely divorced from N&W and unable to influence action by N&W or its shareholders.

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[4]An east-west route comprised of N&W, P&WV, WM, Reading, and CNJ.

The Department argues that the merger would remove a significant independent competitive force, making it important that N&W remain an effective competitor, free from PRR-NYC control. It agrees with the C&O-B&O contention that the latter system should not be left to compete against a merged PRR-NYC which can also control or influence N&W.

The applicants reply that whether PRR has power to control N&W is not at issue here. PRR has already surrendered 314,519 shares of N&W preferred stock and arranged for disposition of one-third (800,000 shares) of its N&W common stock. See F. D. No. 24039, *Norfolk & Western Ry. Co. Securities*, I.C.C. , decided April 3, 1966. Applicants deny any attempt by PRR to control N&W or violate in letter or spirit the order in the *N&W merger* case. They view the fact that two of the three trustees of PRR's N&W stock voted for the N&W and C&O-B&O merger and one against it as convincing proof that the trustees are independent of each other and of PRR as intended.

New York agrees with the applicants that the trustees clearly voted independently and that PRR no longer controls N&W. NH asserts that the question is purely hypothetical at this time and that if any attempt is made by the Transportation Company to control N&W, the question can always be raised in the *N&W merger* case.

Although agreeing with C&O-B&O and Reading that the question of whether PRR can significantly

control or influence N&W requires further consideration, the Department does not urge that the instant proceedings be reopened or consummation of the merger be postponed for that purpose.

We retain complete jurisdiction in the *N&W merger* case over the divestiture of PRR's holdings in N&W, severance of all management relationships between the two carriers, and relinquishment of PRR's voice in N&W's control.

We consider the petitioners' arguments to constitute informal complaints concerning violation of our divestiture condition, and shall promptly investigate to determine whether any additional formal or informal action by the Commission is warranted. Since we have jurisdiction to correct abuses of the program we prescribed in the *N&W merger* case for PRR's divestiture of its financial and other interests in N&W, and since the record herein would be of little value in deciding the issues therein, no adequate basis appears for reopening the instant proceedings to dispose of petitioners' contention.

Effect of the merger on C&O-B&O, et al. C&O-B&O, and their family lines, Reading and CNJ, also request reopening to receive evidence of the traffic that allegedly would be diverted by the Transportation Company from their respective systems.

Their reasons for not previously offering such evidence is that they did not, at the outset of these

proceedings, and do not now, oppose the merger. CNJ states that in the beginning, it did not believe it would be adversely affected. Reading states it did foresee some diversion but decided that the time and expense of computing and proving it would not have been justified merely to obtain traffic conditions of the kind we ordinarily impose in merger cases. C&O-B&O explain their action on the ground that they considered the merger to be basically consistent with the public interest notwithstanding its adverse effect.

The petitioners' argue that their failure to offer diversion evidence in this proceeding has now operated to prevent them from ever claiming or being allowed to demonstrate injury from the merger and that the hearing officer in the hearings held in connection with inclusion of E-L, B&M and D&H in the reopened *N&W merger* case, excluded evidence and testimony offered by the petitioners as to the competitive effect of the PRR-NYC merger. The reason given for the exclusion of this evidence was that in the prior report we had adopted without modification a finding of the hearing examiners on page 305 of their report that the net effect of the merger will not be detrimental to such carriers individually or to their ability to provide a general transportation service to the public.

The applicants reply that the request for reopening to show adverse effect is obviously a strategic move designed for delay of these proceedings pending the proposed N&W and C&O-B&O merger which did not

appear on the horizon until both N&W and C&O-B&O had established their respective systems and the instant merger was on the threshold of decision. They argue that when the N&W and C&O-B&O merger case is heard, all lines included therein will have full opportunity to make any relevant showing, and appropriate remedies will be available in the event of rulings by the hearing officer to exclude relevant evidence.

New York agrees with the applicants that reopening the proceedings for the purpose desired by the petitioners would only needlessly delay consummation of the merger; which, in its opinion, is undoubtedly the reason why the petitioners' request is made.

The Department considers the important public concern with the instant merger and the merger proposed by N&W and C&O-B&O to be paramount and to require consideration of the evidence now sought to be introduced by the petitioners. It notes, however, that the petitioners have but slight equitable claim in view of their refusal to submit such evidence earlier.

The hearing examiners' findings regarding the competitive effects of the merger upon the petitioners are as much based on a failure of the several petitioners to come forward with assertions or proof of injurious traffic diversion as on any affirmative showing of no effect. CNJ, like N&W, made no appearance during the two years of hearings; and while C&O, B&O and Reading did appear, they chose to remain silent on the issue of adverse effects. Their expressions of discontent now

interjected, more than four years after the merger application was filed and after petitioners had foregone the unusually lengthy opportunity to timely do so, come too late for serious consideration herein. Their measured and deliberate silence during the hearing support the inference that they saw more to be gained thereby in their own system-building aspirations than would result from forceful opposition likely to arouse counter opposition.

Now, with the N&W-Nickel Plate merger and the C&O-B&O control transactions safely beyond challenge, and put into effect with remarkable success, petitioners have nothing to lose and perhaps much to gain by breaking their silence. Delay alone works in their favor. By requesting this "second chance" to show adverse impact, petitioners are asking, in effect, that we begin anew to gather data and then practically to reappraise the entire merger. To this we cannot accede.

We believe the petitioners are guilty of laches, and that nothing they now call to our attention warrants the further proceeding sought on this issue. We also believe the public is entitled to the benefits of this merger—and the applicants, to a final decision on it—without further delay. Moreover, we believe the public policy and the law in favor of orderly procedure and timely conclusion of litigation preclude us from reopening, under the circumstances present, to make a second chance available to petitioners for a showing of alleged adverse effect.

As an alternative to reopening these proceedings for further hearing on the issue of adverse effect, C&O-B&O suggest we eliminate from the findings the statement that they will not be adversely affected. This alternative course is preferable to reopening the proceedings, because it would both avoid delay and yet eliminate an impediment against petitioners' showing adverse effect as pertinent in other proceedings. Therefore, on reconsideration we modify the prior finding by now finding "it has not been shown of record that this merger will be detrimental to C&O-B&O, CNJ, or Reading individually or to their ability to provide a general transportation service to the public." No further hearing now need be held on this subject in these proceedings or consummation of the merger delayed for such reason.

Inclusion of NH's operations. Reconsideration of our findings regarding inclusion of NH's passenger and freight operations in the merger is requested by Shapp, E-L, D&H and B&M. Only the first-named petitioner opposes the inclusion entirely. He contends it requires the citizens and businessmen of Pennsylvania to subsidize their rivals in southern New England and that it is conceivable NH may never be included in the merger. Although E-L does not oppose the inclusion of NH's operations, it too expresses doubt as to whether it will ever be accomplished and contends that consummation of the merger should be deferred until it is clearer whether or not NH will be included and, if so, when and on what terms.

E-L emphasizes the legal difficulties standing in the way of the inclusion, such as those connected with the Bankruptcy Act, and complains that there has been no commitment as to the form of inclusion or type of transaction involved. It also contends that the prior report does not contain adequate findings as to the effect the inclusion of NH's operations would have upon itself, D&H, B&M, Reading, CNJ and WM. It professes inability to rely on protective conditions which may be devised in connection with the inclusion but request it be named in that portion of condition 8 of appendix A of the prior report directing the applicants and NH, when arriving at terms for the inclusion, to negotiate with Reading, CNJ, and WM concerning the amount of traffic of those railroads subject to diversion by reason of the inclusion of NH's operations and as to any conditions necessary to protect existing routes and gateways. D&H and B&M limit their petitions on this point to requests that they also be named in said condition 8 to the same extent.

The Mass. DPU, Conn. PUC and R.I. DPU all strenuously object to postponement for further consideration of this question. New York points out that unless consummation comes soon, NH simply may not survive and asserts that it would be a tragedy if that carrier has to be liquidated and its vital services discontinued because of unnecessary delay in consummation of the merger.

The question of whether NH's operations should be included in the transactions was exhaustively dis-

cussed in all its major aspects in the report of the hearing examiners and in our prior report. E-L and the other carriers requesting reconsideration on this ground were fully aware of NH's petition for inclusion and were afforded ample opportunity to submit evidence in opposition thereto. We indicated in the prior report our awareness of the necessity for satisfying the procedural requirements of section 77 of the Bankruptcy Act. Speculation as to whether and how the individual statutory requirements apply to the inclusion would have been pointless at that time and is equally pointless now. Our finding that inclusion of NH's freight and passenger operations would be consistent with the public interest was arrived at on the evidence of record and is sufficient for the purpose of these proceedings. Delay in consummation of the merger in order to settle the procedural questions currently raised by E-L or others would merely add to the problems involved in the inclusion. Such delay is not in the public interest.

The applicants contend that E-L, D&H and B&M have been given sufficient protection from the effects of the inclusion of NH's operations and that in adding them to condition 8 as carriers with whom applicants should negotiate would serve no purpose except possibly to delay the inclusion. Nevertheless, they indicate that they have no objection to negotiating with the petitioners when the inclusion occurs as D&H suggests.

All three of these petitioners are afforded protection in the prior report from the effects of the merger pending

determination of their own petitions for inclusion in N&W or the Transportation Company. And in the event the inclusion of NH's operations is accomplished during the protective period, that protection will operate against such adverse effect as might otherwise fall upon these petitioners.

The negotiation requirements of condition 8 were inserted to expedite the inclusion through the resolution of as many problems as possible prior to the submittal on October 27, 1966, of the inclusion plan agreed upon by the parties. At this point it is too late for involuntary negotiations to bear fruit prior to the October submittal date. Moreover, it would tend to defeat the purpose of the negotiation requirements if carriers interested in delaying or preventing inclusion of NH's operations were designated as parties with whom negotiations must be conducted; notwithstanding that the applicants in attempting to eliminate obstacles to their merger, are agreeable to such designation. None of the carriers named in the condition nor any other carrier with a valid interest in the matter is precluded by the condition from intervening in the actual inclusion proceeding to show the effect thereof to its traffic or to seek protective conditions. The petitioners' request that they be named in the condition is denied.

Inclusion of D&H, E-L and B&M. Condition 9 of Appendix A to the prior report provides as follows:

> For a period of 1 year following a final order or judgment denying the petitions of the Boston and

Maine Corporation, Erie-Lackawanna Railroad Company and/or The Delaware and Hudson Railroad Corporation for inclusion in *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger*, 324 I.C.C. 1, the Commission will retain jurisdiction to receive from the said petitioners and Pennsylvania New York Central Transportation Company supplemental petitions for inclusion herein, as described in the attached report. In the event no agreement is reached by the parties within the prescribed time, jurisdiction is retained for the Commission upon its own motion to proceed as may be deemed necessary to determine whether inclusion herein would be consistent with the public interest, and, if so, appropriate terms therefor.

On the subject of its own inclusion D&H asserts that having started down the avenue of inclusion in N&W, it will continue to follow that approach with due diligence and in good faith. But, it contends, if inclusion in N&W is not found consistent with the public interest or cannot be accomplished on equitable terms, it has a "right" to be included in the Transportation Company.

It interprets condition 9 to mean that if its inclusion in N&W is not authorized, it may be subsequently included in the Transportation Company; but that the question of whether the latter inclusion is consistent with the public interest would be reopened only if no agreement on inclusion is reached with the Transportation Company. The assumption implied is that that question has already been decided in the affirmative and the decision will stand provided the said agreement is reached.

It reasons that our finding its service to shippers essential and requiring its preservation, together with the public interest benefits that would result, establish that its inclusion in the merged PRR-NYC system if not included in N&W meets the statutory requirement of consistency with the public interest. Further it contends that it is entitled now to an unequivocal finding to that effect and that insofar as another full scale hearing on the public interest aspects of its inclusion in the Transportation Company would give opponents of such inclusion a second opportunity to contest it, condition 9 is unjust and unreasonable.

D&H also objects to the lack of provision for its inclusion in Transportation Company in the event its N&W inclusion petition is granted upon terms it does not accept. It wants authorization to file for inclusion in the Transportation Company within one year after a final determination of its petition for inclusion in N&W, whether that determination is a denial, or an approval on terms subsequently rejected by D&H stockholders. It proposed a revision of condition 9 to reflect its position. E-L and B&M seek similar relief.

E-L, supported by the New Jersey PUC, seeks postponement of the merger until it is included or has assurance of being shortly included in either N&W or the Transportation Company. Otherwise, it argues, the postponement should be continued indefinitely so that problems it envisions might be brought closer to resolution. It also attacks our findings regarding ac-

commodation of section 5(2) with the antitrust laws and their general adequacy under the Administrative Procedure Act. In neither of the latter two contentions do we find merit, or any matter warranting reconsideration.

B&M declares that the public interest requires the merger to be made effective with a minimum of delay and that the petitions for inclusion in N&W should continue to be expedited.

The cities of Pottsville, Scranton and Allentown and the county of Lackawanna, Pa., in identically worded petitions, press for further hearing to explore protective conditions for E-L, Reading, and CNJ, and the impact of such conditions upon the respective petitioners.

After due consideration of the various petitions on this ground, we find nothing to warrant a conclusion respecting inclusion of the three carriers contrary to that in the prior report, namely, that action on their petitions for inclusion herein should be withheld until final disposition is made of their petitions in the *N&W Merger* case, and that, if granted in that case, they should be dismissed here without further action.

There is merit, however, to the requests that we remove the requirement for joinder of the Transportation Company in a petition for inclusion, and bind the Transportation Company to accept inclusion if we so order, and to that extent the changes sought in condition 9

are adopted. We reject any change that would open the way for the petitioners' stockholders to reject Commission approved terms for inclusion in N&W while holding out for inclusion in the Transportation Company or that would automatically find the latter inclusion consistent with the public interest in the event inclusion in N&W is denied. Such change would render a binding decision in either the *N&W Merger* case or in this case extremely difficult and could only lead to further litigation by other carriers which could be adversely affected.

Upon reconsideration item 9 of appendix A to our prior report is modified as follows:

9. If there be a final determination denying the petition of Erie-Lackawanna Railroad Company, Delaware and Hudson Railroad Corporation or Boston and Maine Corporation for inclusion in *Norfolk & Western Ry. Co. and New York, O., & St. L. R. Co. Merger*, 324 I.C.C. 1, the petitioner shall have the right, within a period of 1 year thereafter, to file with the Commission a supplemental petition for inclusion herein. Any supplemental petition for inclusion herein shall state the terms and conditions as agreed upon with Pennsylvania-New York Central Transportation Company or, if there be no agreement, as proposed by the petitioner, and, if the Commission shall determine that the inclusion will be consistent with the public interest, the petitioner shall have the right to be included on such terms and conditions as the Commission shall find just and reasonable.

D&H Trackage rights. In the prior report we adopted a recommendation of the hearing examiners that PRR

grant trackage rights over its line between Hagerstown, Md., and Wilkes-Barre, Pa., to D&H. We noted that those two parties had reached agreement on terms therefor, but concluded that opponents of the trackage rights were premature in their objections because the record does not provide an evidentiary basis for the authorization of trackage rights and that further applications under sections 5(2) and 1(18) would be necessary.

D&H objects to our refusal to authorize the trackage rights at this time. It requests a grant of the trackage rights by PRR be made a condition precedent to consummation subject to our finding, when appropriate applications are filed, that such grant is consistent with the public interest and is made on reasonable terms. It contends that a condition in this form will assure both that its trackage rights agreement with PRR will be binding and that any party then opposing the grant will have full opportunity to show why the trackage rights should not be granted or to propose any protective conditions deemed necessary.

In reply WM asserts it interchanges a large amount of traffic with N&W at Hagerstown for movement over the Alphabet Route and that such traffic would be subject to diversion if D&H had the trackage rights. It goes on to say that, as these trackage rights were not at issue during the hearings, the record lacks evidence bearing upon the public interest considerations inherent in that diversion; and therefore, the grant of trackage rights cannot be imposed as a condition to the merger's approval.

In substantial agreement with this position is Reading with whom WM participates in important traffic routes allegedly subject to harm by the extension of D&H to Hagerstown. The applicants agree they are committed to granting the trackage rights subject to our approval.

We are unable to discern from D&H's petition or the replies thereto, any cause for changing our conclusion in the prior report respecting this matter. In our opinion, it will be to D&H's best interest to proceed with the preparation of the required applications so that the merits of its agreement with PRR may be formally determined.

Conditions requested by C&EI. C&EI contends that we should have imposed conditions concerning the maintenance of certain of its trackage rights payments at their present level for the remaining 966 years of the applicable trackage agreement, as well as traffic conditions it requested.

The petitioner's arguments are essentially the same as those discussed and disposed of by the hearing examiners and in the prior report. The petitioner presents no argument that would warrant a conclusions different from those arrived at in that report.

Inclusion of Boston and Providence Railroad Corporation

The B&P Minority Interests devote the greater portion of their reply to the desirability of a two-system rail network in the East, a proposition we considered and disposed of in the prior report. They reiterate their previous request for inclusion of Boston & Providence

in the Transportation Company in its own right rather than as an operation of NH, but their argument, in essence the same as that previously presented, provides no basis for reconsideration of our conclusion on this matter in the prior report.

Protection for the Peoria and Eastern Railway Company

The Levine Group requests postponement of the effective date of the prior order, reconsideration of the prior report and further hearing for the purpose of receiving evidence on the conditions it requests. These conditions would require the applicants to purchase the shares of the Peoria and Eastern Railway Company (P&E) now in the hands of the public or to guarantee the income of P&E and/or prohibit the rerouting of traffic that would normally move over P&E, and take such other measures as may be required to protect the P&E minority. The Levine Group presented no evidence at the hearing, filed no brief, and did not present oral argument. We found nothing in the record to support the conditions, and a need for them is not established in the petition. The petitioner's contentions that the prior report is illegal and contrary to the 14th amendment are patently frivolous and unsupported by the record.

Reciprocal Switching at Pittsburgh

By letter of July 9, 1966, the Bessemer and Lake Erie Railroad Company seeks redefinition of the Pittsburgh area in which the Transportation Company is required by condition 11 of appendix A to the prior

report to enter into reciprocal switching arrangements. It requests that the phrase "Pittsburgh Switching District, Allegheny County, Pa.," be deleted from the condition and the phrase "Pittsburgh Terminal District, Allegheny and Beaver Counties, Pa.," be substituted therefor. However, the term "Pittsburgh Terminal District" is not known in connection with railroad transportation or tariffs and the requested change would considerably enlarge the area contemplated by the prior report in which reciprocal switching must be arranged. Applicants point out that before reciprocal switching is established, all parties involved will have the opportunity to express their views. The requested modification of condition 11 is denied.

PROTECTIVE CONDITIONS FOR D&H, E-L AND B&M

The conditions imposed for the temporary protection of D&H, E-L and B&M during the pendency of their petitions for inclusion in N&W and the Transportation Company are set out in conditions 1 through 9 of appendix G to the prior report. They are fully described in the report.

Large parts of the various petitions for reconsideration presented here are devoted to the conditions of appendix G, referred to as the "protective conditions." Shapp contends they are an illegal pooling device prohibited by section 5(1) of the act and a rate-making cartel in violation of section 5a of the act and the antitrust laws. C&O-B&O contend they are a post-hearing

product without evidentiary support, and that a hearing thereon is warranted because of an alleged impact upon their system.

The Levine Group contends the conditions are in violation of the 14th amendment, against public policy, and an affront to P&E's shareholders. This petitioner also contends that we cannot consistently find that certain railroads require indemnity and not find that P&E should also be so entitled.

C&EI adds that the protective conditions will compound its economic injury because, it is said, the three carriers will route traffic over the Transportation Company rather than competing routes in order to maximize the Transportation Company's revenues and thereby increase their own indemnity payments. It speculates that the Transportation Company would have the ability to divert substantial traffic from E-L, and would choose to do so while paying the indemnity. Additionally, it argues that condition would remove E-L's incentive to increase or retain traffic volume.

Reading contends that the lack of advance notice as to the indemnity protection makes a hearing necessary in order to avoid a denial of administrative due process; and that, if permitted to become effective, the conditions would have a detrimental effect upon its system. The Department also considers a hearing necessary.

D&H, characterizing the conditions as unique and untested, expresses doubts as to their practicability, but

joins with E-L and B&M in requesting various modifications of their terms. It also seeks a condition requiring it to be compensated for any diminution in its value as a going concern, and requests hearing thereon.

E-L argues that the protective conditions are inadequate, and asks further hearing to consider the extensive changes it proposes. It contends that there would be no loss of capital value of E-L resulting from the PRR-NYC merger which would not be offset by inclusion in N&W; but advocates an indemnity for capital loss, if such loss were to ensue.

B&M considers the indemnity concept of the prior report to be sound and correct but it also requests modification of the conditions in various ways, including protection from any diminution of its capital value.

The New Jersey PUC supports E-L's request for change in the base year for computing indemnity payments. Reading contends the changes in appendix G proposed by D&H, E-L and B&M will only aggravate its own situation respecting the merger and maintains that a full hearing should be held on the proposed changes.

D&H, E-L and B&M have replied to the various objections to the conditions imposed for their protection.

The appendix G conditions do not constitute a pool "or division of traffic or service or of gross or net earnings, or of any portion thereof" as contemplated by section 5(1), inasmuch as they do not constitute a "contract,

agreement or combination," entered into by the carriers involved. For the same reason they do not violate any other section of the act or the antitrust laws. In any event, legality under other portions of the act or of other legislation is not the test of conditions imposed in our orders. The sole test contained in section 5(2)(b) of terms, conditions and modifications we might impose in approving a section 5(2) transaction, such as the instant merger, is that they be just and reasonable. Section 5(2)(b) does not require us to find that they do not violate any other section of the act or any other legislation.

In our opinion, the novelty of the conditions triggers the opposition of connecting carriers rather than any definite prospect of adverse effect. Yet their novelty is more apparent than real. We have for many years imposed conditions whereby other provisions of the act were, in effect, waived, e.g., sections 5a, 15 or 15a of the act, or the antitrust laws, to protect the traffic and revenue of carriers affected by railroad consolidation. See *Detroit, T. & I.R. Co. Control*, 275 I.C.C. 455, 492. Various such conditions were prescribed in the prior report, each group differing as required by the situation affecting the individual carriers and interests protected. With respect to E-L, D&H, and B&M, we found a special situation unlike that of the applicants' other connections and requiring different protection. Our underlying purpose in appendix G of the prior report was to preserve for the shipping public dependent upon the protected carriers for transportation, the routes, gateways, rate benefits, and services available through those carriers. We sought

to accomplish this by maintaining the volume and movement of freight over E-L, D&H and B&M at no less than pre-merger levels. Like the so-called "standard" gateway and traffic conditions imposed in Section 5(2) cases, appendix G was designed to preserve the beneficiary railroads' ability to remain competitive with the applicants, and to preserve their routes, connections, and services for the shipping public for the relatively short time until their petitions for inclusion in one of the larger carrier systems are acted upon. Since other connecting carriers are not in the same situation as E-L, D&H, and B&M, there is adequate justification in this proceeding for the differing levels of protective conditions we are imposing. Moreover, any adverse effect the special and temporary protective conditions might possibly have on other connecting carriers would not be as lasting as the permanent inclusion of E-L, D&H, and B&M in the Transportation Company would be.

E-L takes issue with the statement at page 532 of the prior report that "the assurances of [the appendix G] protection must come from the applicants through their acceptance of, and active cooperation in, the implementation of the conditions . . . ." It contends that it is incongruous to find that carriers must be protected from the applicants, and then make the protection dependent upon the applicants. The contention is based upon a misinterpretation. The finding was that, if the immediate consummation were to be authorized, E-L, D&H and B&M would require special protection during the pendency of their petitions for inclusion in a major

system. Special protection was proposed in appendix G and applicants were given the option of either postponing consummation of the merger or assuring the protection of E-L, D&H, and B&M. The terms themselves provide means for enforcement in addition to those provided in the act. The reference to "active cooperation" was an implicit admonition that any conduct frustrating the purposes of the protection would render the applicants subject to the prescribed recourse and, if need be, to substantial revision of our approval order through proceedings under Section 5(9) of the Act, which empowers us to make such supplemental orders as we deem necessary for good cause shown.

On reconsideration, we are persuaded, however, that certain modifications of appendix G may be desirable. The three protected carriers, on petition, have raised valid issues as to interpretation, application, scope, and other aspects of the protection. Additionally, these petitioners have requested the Commission to supplement the protection of appendix G to require the merged company to compensate them for any diminution in the capital value of their properties resulting from anticipated diversion of freight traffic by the merged company, but only in the event that they will be included in the N&W system on terms which reflect such a diminution in value. Applicants oppose imposition of any capital loss indemnification, but they do express willingness to accept post-merger modification of the appendix G conditions either to curb the ability of the protected carriers to manipulate indemnity claims (as some petitioners appre-

hend) or to strengthen the protection. Acknowledging that further hearing may be necessary in the reconsideration of Appendix G and provided they may consummate their merger without delay, applicants agree to observe the requirements of that appendix in the meantime and to accept revisions of the protective provisions retroactive to the consummation date.

It is clear that E-L, D&H and B&M perform essential transportation service to shippers and communities on their lines and that a continuation of such service is consistent with the public interest. In the unique circumstances presented here, it is appropriate for us to consider whether or not a form of capital loss indemnification of the type suggested by E-L, D&H, B&M and N&W should be imposed here. We will not decide this question at this time, but we will refer it for consideration at a further hearing at a subsequent time.

Accordingly, on reconsideration, we find that these proceedings should be reopened for further consideration, with limited further hearing to determine: (1) in what respects the conditions already imposed in appendix G should be modified; (2) what, if any, modification is needed to prevent manipulations of the type referred to by C&EI or other petitioners; and (3) whether or not the capital loss indemnification provision should be imposed.

All parties of record, of course, are free to participate in the further hearing and ensuing proceedings. In addition, since there are now pending two proceedings

involving proposals for inclusion of E-L, D&H and B&M in the N&W system,[5] N&W has a close interest in the nature and scope of the protections here dealt with; and we therefore grant N&W's petition for leave to intervene to the extent necessary to permit participation in the further proceedings as above limited.

Since the applicants have indicated willingness to accept post-merger modification of the protective conditions, they may proceed with consummation of the merger upon our authorization thereof becoming effective. Such consummation will constitute irrevocable assent on the part of the applicants to any modification resulting from the further consideration herein described and ordered and which are found to be just and reasonable; as well as irrevocable agreement by the applicants to comply fully with the conditions as modified. It should be clearly understood that the consummation of the merger will not foreclose or limit court review of any decision the Commission may make in regard to the capital indemnity issue.

It is our intent in this decision on reconsideration, that during the pendency of the further hearing and further consideration all traffic conditions will remain in effect whether imposed through appendix G or elsewhere in the prior report; the indemnity provisions of appendix G, viz., paragraphs 3, 5C and all other provisions therein dealing with indemnity payments be,

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[5] *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger, supra,* and Finance Docket No. 23832 et al., Norfolk & W. Ry. Co.—Merger—etc.—Chesapeake & O. Ry. Co.

and they are hereby, rescinded; all the provisions of appendix G will be subject to the further hearing and further consideration, and such modification thereof as may be found appropriate will be made effective as of the date prescribed in a modification order, except that any provision which may be decided upon for the payment of indemnities will be made applicable retroactively to the date the merger is consummated; and acceptance of these terms and their full observance shall be a further condition to consummation of the merger.

In paragraph 6 of appendix G, the applicants and the three protected carriers were authorized to enter into an agreement or agreements to supersede the protection provided for in the appendix. It was and is our intent that any such agreement would be subject to our approval, and we, therefore, modify said paragraph 6 to require that no such agreement may be put into effect until it has had the specific approval of this Commission.

We conclude that there is no reason for any further postponement of the consummation of the merger, which we have found to be in the public interest, nor, other than for the limited purpose set forth above, for further hearings in these proceedings.

Due to the lengthy and numerous contentions contained in the pleadings here considered, we have discussed only the major issues; the other issues and arguments have been considered and found not to justify the relief sought.

We find that the matters raised on petition regarding the terms and protections of appendix G of the prior report and order, and the matter of capital loss indemnification, warrant further hearing and further consideration, and that the Norwich and Worcester Railroad Company, the Norfolk and Western Railway Company, and Oscar Gruss & Son should be permitted to intervene herein for the limited purposes described above.

We further find that, except to the extent indicated above, the material matters set forth in the various pleadings considered here present no error of fact or law with respect to the matters complained of nor adequate cause for reconsideration, rehearing, further hearing, or further argument.

An appropriate order will be entered.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 16 day of September, 1966.

FINANCE DOCKET No. 21989

PENNSYLVANIA RAILROAD COMPANY—MERGER—NEW YORK CENTRAL RAILROAD COMPANY

FINANCE DOCKET No. 21990

PENNSYLVANIA RAILROAD COMPANY STOCK ISSUANCE

Further consideration to the matters and things involved in these proceedings having been given, and the Commission on the date hereof having made and filed its report on reconsideration, which report and the prior report in the proceedings, 327 I.C.C. 475, are made a part hereof:

It is ordered, That the Norwich and Worcester Railroad Company be, and it is hereby, permitted to intervene and become a party to the above-described proceedings for the purpose of seeking inclusion therein in accordance with its petition for inclusion filed July 8, 1966;

It is further ordered, That the Norfolk and Western Railway Company and Oscar Gruss & Son be, and they are hereby, permitted to intervene and become parties herein for the limited purposes set forth in the said report on reconsideration, and that the petitions of these

two interveners be, and they are hereby, denied in all other respects;

It is further ordered, That the report and order of April 6, 1966, 327 I.C.C. 475, be, and it is hereby modified in accordance with the finding in said report on reconsideration;

It is further ordered, That the matter of modification of appendix G to said report of April 6, 1966, and the question of indemnification for capital loss as discussed in the attached report on reconsideration be, and they are hereby, set for hearing at a date and place and before a hearing officer to be announced; and

It is further ordered, That as hereby modified, said report and order of April 6, 1966, shall remain in full force and effect.

By the Commission.

H. NEIL GARSON
Secretary

(SEAL)